STATE OF MICHIGAN

COURT OF APPEALS

G & B II PC, C. WILLIAM GARRATT, DONALD R. BACHAND III, and SARAH C. ARNOLD,

Plaintiffs-Appellees,

v

ERIC J. McCANN and ERIC J. McCANN PC,

Defendants,

and

YVONNE MILLER,

Garnishee Defendant-Appellant.

UNPUBLISHED
May 1, 2008

No. 276662
Oakland Circuit Court
LC No. 2004-057340-CK

Before: Servitto, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Garnishee defendant, Yvonne Miller, appeals as of right the trial court's grant of summary disposition in plaintiffs' favor. Because Miller has failed to present a valid defense, we affirm.

Plaintiffs obtained a judgment against defendants in the underlying lawsuit in the amount of $35,000. To collect on the judgment, plaintiffs caused a writ of garnishment to be issued as to Miller. Plaintiffs and defendants contended that on September 20, 2003, Miller executed a promissory note in favor of defendants for the repayment of a $28,532.07 debt. Plaintiffs and defendants asserted that despite the fact that the note required repayment of the debt by September 20, 2004, Miller made no payments on the note. Miller, however, filed a garnishment disclosure denying any indebtedness to defendants and asserted that defendants orally forgave the note. The trial court granted plaintiffs' subsequent motion for summary disposition and entered a judgment in favor of plaintiffs and against Miller in the amount of the note, $28,532.07.

We review a decision on a motion for summary disposition de novo. *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002). In reviewing an order granting or denying summary disposition under MCR 2.116(C)(10), this Court "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). As we stated in *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000):

> Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim. A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper (internal citations omitted).

Issues of statutory interpretation are also reviewed de novo. *People v Derror*, 475 Mich 316, 324; 715 NW2d 822 (2006).

On appeal, Miller first asserts that summary disposition was improper where she and defendant's contradictory testimony concerning whether defendant forgave the promissory note presented a question of fact. While the trial court did not make clear on which basis (MCR 2.116(C)(9) or (C)(10)) it was granting plaintiffs' motion, during the hearing, the trial court noted that Miller acknowledged the note and the fact that she never paid it back, and referenced MCL 440.3604 and that Miller had nothing to demonstrate that defendants, in writing, forgave the note. It would appear, then, that the trial court found that Miller presented no valid defense.

MCL 440.3604 provides:

> (1) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (*i*) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (*ii*) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.
> (2) Cancellation or striking out of an endorsement pursuant to subsection (1) does not affect the status and rights of a party derived from the endorsement.

The clear language of the above statute requires a party entitled to enforce an instrument to undertake an affirmative, tangible act to demonstrate an intent to discharge the obligation under the instrument. It is undisputed that the original instrument is intact and that defendants undertook no affirmative action to demonstrate their intent to forgive the note. Miller, however, relies upon MCL 440.3117 to support her contention that forgiveness of a debt need not necessarily be demonstrated through the specific actions articulated in MCL 440.3604, but such forgiveness can be premised upon an oral agreement. MCL 440.3117 states:

> Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Miller has provided no authority or analysis to explain how the above statute applies to the current situation. An appellant may not simply announce a position or assert an error in his brief and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Moreover, the comment to MCL 440.3117 provides examples where the statute would apply, such as where the separate agreement is a security or mortgage, or where the initial agreement is conditional. Miller has not indicated that any of the above situations apply, nor has she established that MCL 440.3117 was intended to encompass an alleged *non-contemporaneous, oral* agreement to forgive a note, despite the provisions set forth in MCL 440.3604. As there is no dispute that Miller's obligation under the note was not discharged under any of the mechanisms set forth in MCL 440. 3604 and Miller has provided no support for her alternative position to this Court or the trial court, summary disposition was appropriate.

Miller further asserts that entry of summary disposition in plaintiffs' favor was improper where she had no opportunity to conclude discovery. A motion for summary disposition is generally premature if granted before discovery on a disputed issue is complete. *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006). If, however, further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position, summary disposition may nevertheless be appropriate. *Id*. If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence. *Michigan Nat'l Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993).

Here, the trial court concluded that additional discovery in this matter would be unnecessary, given that while Miller asserted that defendants orally forgave the note, defendants already denied doing so. Miller gave minimal consideration to this issue on appeal, and, again, we will not articulate and support parties' arguments for them. *Yee, supra.* Moreover, Miller's deposition was taken on November 2, 2006 and defendant McCann's deposition taken on January 18, 2007. While Miller's counsel indicated at oral argument that he required additional discovery, pertaining specifically to how McCann treated this debt on his income tax returns, counsel did not question McCann regarding the same during his January deposition, nor did counsel request any other documentation from McCann prior to summary disposition being entered on February 14, 2007. While we find the trial court's comments about its personal knowledge of McCann's propensities inappropriate, we nevertheless, after de novo review, agree

that Miller having identified no other potential factual support for her claim that would be revealed through additional discovery, summary disposition was appropriate.

Affirmed.

/s/ Deborah A. Servitto
/s/ Joel P. Hoekstra
/s/ Jane E. Markey